In the Supreme Court of the United States

OCTOBER TERM, 1970

Nos. 1774, 7130, 7137, 7153, 7154 and 7166

WILLIAM CRANDALL, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE PETITIONS FOR WRITS OF CERTIORARI

OPINION BELOW

The opinion of the court of appeals is reported at 438 F. 2d 858 (C.A. 5).

JURISDICTION

The judgment of the court of appeals was entered on January 13, 1971. A petition for rehearing was denied on March 20, 1971. Mr. Justice Black extended the time for filing the petitions for writs of certiorari in Nos. 1774, 7137, 7130, and 7154 (petitioner Marmorstein only), to May 29, 1971, and on May 28,

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1971, all the petitions were filed.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether indigent petitioners were improperly denied copies of a daily trial transcript.

2. Whether petitioners were denied a fair trial by the use of charts summarizing complex transactions.

3. Whether the trial judge's explanation of his refusal of the jury's request to have the charts in the jury room was prejudicial error.

4. Whether the court of appeals' examination of the charts was proper.

5. Whether the trial court properly refused to give an instruction requested by petitioner Fanning.

6. Whether the trial judge intervened in the trial to an extent constituting a denial of due process.

7. Whether petitioners were denied an opportunity to develop the issue of alleged electronic eavesdropping.

8. Whether the trial court's charge constituted a comment on petitioners' failure to testify.

STATEMENT

Petitioners and others were charged in an eight-count indictment with conspiracy to misapply bank funds and various substantive acts of misapplying bank funds and making false entries in bank records in violation of 18 U.S.C. §§ 656, 1005. Three defendants pleaded guilty. After a jury trial in the

[1] No application for extension of time was received from petitioners Fanning, Schikevitz and Von Zamft, and their petitions are therefore out of time under Rule 22(2).

United States District Court for the Southern District of Florida, one defendant was acquitted and the remaining nine, including petitioners, were convicted on the conspiracy count and various substantive counts.[2] Petitioners were sentenced as follows: Crandall, five years' probation; Gordon, four years' imprisonment; Fanning, two years' imprisonment; Marmorstein, four years' imprisonment; Von Zamft, five years' imprisonment; Schikevitz, five years' probation; Dixon, two years' imprisonment. The court of appeals affirmed in a comprehensive opinion reported at 438 F. 2d 858 (C.A. 5).

The trial lasted four and one half weeks, during which testimony of sixty witnesses was received and 650 documents were entered in evidence.

The facts of the case are set forth in the opinion of the court of appeals. They showed a complex scheme by which the conspirators gained control of the Five Points National Bank and misapplied its assets to their own benefit. Loans of several hundred thousand dolars were fraudulently arranged during the four and one half months the conspirators controlled the bank. Only a small portion was recovered.

ARGUMENT

1. The thorough opinion of the court below fully answers petitioners' contentions regarding the use of charts (Questions 2 & 3, see App. A in No. 7154, pp. 37–41) the conduct of the trial (Questions 6 & 7, see

[2] Another of the co-conspirators, Dubin, has filed a petition for certiorari to which the government has already responded, *Dubin v. United States*, No. 7007, this term.